71-1640

Supreme Court, U. S.
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E. ROBERT SEAVER, JR., CLERK

IN THE

Supreme Court of the United States

October Term
No. ____

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for Rehearing of Order Denying Petition for Writ of Certiorari.

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Petition for Rehearing of Order Denying Petition for Writ of Certiorari.

Petitioner, Bank of America National Trust and Savings Association prays that this Court grant rehearing of its Order of October 10, 1972 denying the petition for a Writ of Certiorari and that a Writ of Certiorari issue to review the judgment of the Court of Appeals for the Ninth Circuit in the above-entitled case as prayed for in the petition filed herein.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

The opinion of the United States Court of Appeals for the Ninth Circuit affirming the judgments of the United States District Court in the instant case appears to be in conflict with the decision of the United States Court of Appeals for the Sixth Circuit in the case of *McKeehan v. United States,* 438 F.2d 739, as well as with the case of *United States v. U. S. Coin & Currency,* 401 U.S. 715, 28 L.Ed.2d 434, 91 S.Ct. 1041.

The court in *McKeehan v. United States (supra)* at page 745 expressly "destroyed" the legal fiction that inanimate objects can be guilty of wrongdoing and then went on to find that under the Fifth Amendment the imposition of forfeiture in case of an innocent party is penal and causes an unconstitutional deprivation of personal property without just compensation.

The leading case in the area of forfeiture is the recent Supreme Court case of *United States v. U. S. Coin & Currency,* 401 U.S. 715, 28 L.Ed.2d 434, 91 S.Ct. 1041, where the Court concluded at pages 721-722 as follows:

> "When the forfeiture statutes are viewed in their entirety, it is manifest that they are intended to impose a penalty only upon those who are significantly involved in a criminal enterprise."

Conclusion.

Since the trial court expressly found that petitioner was innocent of any wrongdoing, it is respectfully urged for the reasons set forth above and in the Petition for a Writ of Certiorari, that rehearing be granted herein and that a Writ of Certiorari issue to the Court of Appeals for the Ninth Circuit to review the judgment below.

Respectfully submitted,

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STEVEN I. BUCK,
Of Counsel.

Certificate of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

HARRIS B. TAYLOR,
Counsel for Petitioner.